



September 9, 2009

Dear Sirs,

**WIPO Center Submission on Post-Expiration Domain Name Recovery –
UDRP Consideration**

The World Intellectual Property Organization Arbitration and Mediation Center (the WIPO Center) submits the following comments:

The WIPO Center welcomes this initiative in general terms, and queries whether consideration could also be given to implications (if any) for the Uniform Domain Name Dispute Resolution Policy (UDRP).

In particular, further to any (technical) matters on expiry and deletion of domain names that may be addressed from the point of view of registrants through this Policy Development Process, it may also be useful to consider what (if any) aspects may bear on the administration of domain name disputes under the UDRP. Consideration could perhaps also be given to whether and to what extent ICANN's existing Expired Domain Name Deletion Policy may be of relevance in this regard, and possible ways in which the operation of the latter may usefully be clarified or improved.

The WIPO Center has observed difficulties or complexities which have arisen in the context of UDRP proceedings in part from differing registrar interpretations of ICANN's existing policies in relation to domain name deletion and expiry as these apply in UDRP proceedings. The current policy established to address such issues is the ICANN Expired Domain Deletion Policy¹ which states *inter alia* as follows:

/...

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¹ The same terms are being adopted to ICANN Registrar Accreditation Agreements that are entered into after May 21, 2009.

3.7.5.7 In the event that a domain which is the subject of a UDRP dispute is deleted or expires during the course of the dispute, the complainant in the UDRP dispute will have the option to renew or restore the name under the same commercial terms as the registrant.

This Policy is often a useful tool, although its application to circumstances of expiry or deletion in UDRP proceedings is not always clear. As but one example of a recent UDRP decision which illustrates some of the potential difficulties that can arise in this respect, see [Grundfos A/S v. Bridge Port Enterprises Limited, WIPO Case No. D2008-1263](#).

In the UDRP context, one core question is often whether adequate notice exists under the current policies to timely alert parties in a UDRP proceeding of upcoming expirations, and pending deletions, such that the latter may access their entitlements under the ICANN Expired Domain Name Deletion Policy, with a view to ensuring that disputed domain names remain subject to UDRP proceedings.² Perhaps consideration could usefully be given to clarifying what (if any) reasonable notice obligations could usefully vest with registrars for the benefit of registrants and parties to UDRP proceedings in this regard.

Yours sincerely,



Leena Ballard
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Domain Name Dispute Resolution Section

² It can be noted that while WhoIs record would indicate a date of expiry, it would not disclose whether such expiry date is the registrar expiry date or whether it is the registry expiry date. Moreover, WhoIs record would not indicate whether a registrant has requested deletion of a domain name, thus, a complainant in a UDRP proceeding would not be able to exercise its rights under paragraph 3.7.5.7 of the ICANN Expired Domain Deletion Policy without the registrar *de facto* indicating the pending deletion.